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February 27, 2009

Hon. Anna K. Quinlan,  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

Via Electronic Filing

RE: STB Finance Docket No. 35195 Wisconsin Department of  
Transportation-Petition for Declaratory Order-Rail Line in  
Sheboygan County, WI

Dear Ms. Quinlan

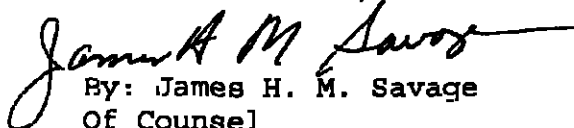
On behalf of Wisconsin Department of Transportation  
("WisDOT") I am electronically submitting the following by  
way of amendment and supplement to the Petition for  
Acquisition and Operation Exemption originally filed  
February 13, 2009:

Amended Verified Petition for Exemption in re: STB  
Finance Docket No. 35144, replacing ATTACHMENT 2 to  
WisDOT's February 13, 2009 filing. Exhibit C of the amended  
petition now includes the UPRR/WSOR Freight Easement Deed  
and Agreement.

A Supplemental Certification of Proof of Service is  
also attached.

Thank you for your consideration.


Sincerely yours,  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of Counsel

Att.

CERTIFICATION OF PROOF OF SERVICE

I certify that I served on February 13, 2009 by first class mail and by electronic mail upon all parties a true copy of the petition for declaratory order, and that I further served this day upon all parties by electronic mail a true copy of the within letter

  
James H. M. Savage

Dated: February 27, 2009

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 35144**

**WISCONSIN & SOUTHERN RAILROAD CO.  
-- ACQUISITION AND OPERATION EXEMPTION --  
UNION PACIFIC RAILROAD COMPANY**

**AMENDED VERIFIED PETITION FOR EXEMPTION  
UNDER 49 U.S.C. 10502  
FROM 49 U.S.C. 10902**

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James H. M. Savage  
Of Counsel

Counsel for Petitioner  
Wisconsin & Southern  
Railroad Co.

Date: February 23, 2009

**EXPEDITED HANDLING REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 35144**

**WISCONSIN & SOUTHERN RAILROAD CO.  
-- ACQUISITION AND OPERATION EXEMPTION --  
UNION PACIFIC RAILROAD COMPANY**

**AMENDED VERIFIED PETITION FOR EXEMPTION  
UNDER 49 U.S.C. 10502  
FROM 49 U.S.C. 10902**

I.

**INTRODUCTION**

Pursuant to 49 U.S.C. 10502, Wisconsin & Southern Railroad Co ("WSOR" or "Petitioner"), an existing class II regional railroad, seeks an exemption from 49 U.S.C. 10902 permitting it to acquire and operate a permanent exclusive freight operating easement ("Freight Easement") over approximately 10.95 miles of railroad known as the Kohler Industrial Lead (hereafter "the Line") currently owned by the Union Pacific Railroad Company ("UPRR").<sup>1</sup> The State of Wisconsin Department of Transportation ("WisDOT") has executed an agreement to purchase the right-of-way and railroad assets comprising the Line from UPRR (the "UPRR/WisDOT Purchase Agreement") with WSOR to acquire the Freight Easement and associated common carrier obligation

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<sup>1</sup> The Freight Easement consists of the Freight Easement Deed and Agreement and related Freight Operating Agreement with UPRR as Grantor and WSOR as Grantee, copies of which are attached hereto and jointly designated as Exhibit C

directly from UPRR. Concurrently with this filing, WisDOT is submitting a Petition for Declaratory Relief seeking a ruling that its acquisition of the right-of-way and railroad assets will not render it a rail common carrier under State of Maine<sup>2</sup> and similar agency precedent involving the acquisition of active rail lines by public agencies<sup>3</sup>.

Additionally and as part of this transaction, WSOR will in its own right acquire from UPRR and operate about 1,000 feet of spur track, constituting the lead to the Cargill Malt Plant (formerly the Schreier Malting Plant) at Sheboygan, WI (the "UPRR Spur").

Finally, WSOR has simultaneously filed a verified notice of exemption<sup>5</sup> covering its acquisition of overhead trackage rights from UPRR between MP 4.0 near Kohler and MP 1.2 at Kohler Junction, in Sheboygan County, WI (the "Overhead Trackage Rights") to permit WSOR to connect to and access the UPRR Spur and the Line as well as to interchange freight with UPRR over UPRR's Access Trackage and Interchange Trackage as depicted on Exhibit A. Under the Overhead Trackage Rights dispatching, track maintenance, and signal maintenance of the UPRR Spur will be performed by WSOR, with the cost shared by WSOR and UPRR on a per car mile basis.

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<sup>2</sup> See, e.g., Maine, DOT--Acq Exemption, Mo Central R Co, 8 I C C 2d 835 (1991) (State of Maine)

<sup>3</sup> STB Finance Docket No 35195

<sup>4</sup> The postal address of the facility is 704 S 15<sup>th</sup> Street, Sheboygan, WI 53081. Per UPRR, this spur track was formerly referred to as "the Schreier Lead". For purposes of this transaction, the trackage will be referred to as "the UPRR Spur".

<sup>5</sup> STB Finance Docket No 35191

WSOR submits a map depicting the location of the Line, the Overhead Trackage Rights, the UPRR Spur, the Access Trackage and the Interchange Trackage as Exhibit A; a map depicting the entire WSOR system as Exhibit B; and the Freight Easement Deed and Agreement and related Freight Operating Agreement as Exhibit C.

The procedures set forth in the Board's Decision regarding Disclosure of Rail Interchange Commitments<sup>6</sup> do not apply as there is no provision in the UPRR sale agreements with either WisDOT or WSOR restricting WSOR's future interchange with a third party carrier west of MP 14.95 at Plymouth, WI. There are two interchange points with UPRR: UPRR and WSOR at Sheboygan, WI and WSOR with UPRR at Kohler Junction, WI.

For the reasons stated below, WSOR requests expedited consideration, with a decision to be issued on or about April 15, 2009, effective upon service.

## II.

### FACTUAL BACKGROUND

Petitioner is an existing class II railroad common carrier operating over 700 miles of trackage in Wisconsin and adjacent northern Illinois. Originally established in 1980 to operate segments of the former Milwaukee Road that were being abandoned and subsequently acquired by the State of Wisconsin, WSOR has grown substantially over the past 28 years. Starting as a class

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<sup>6</sup> STB Docket No. EP-575-1 (served May 29, 2008)

III short line rail carrier operating 93 miles of track in central Wisconsin, WSOR eventually assembled a network of rail lines serving the southern half of the State consisting of routes formerly operated by Canadian Pacific Railway (or its predecessor the Milwaukee Road), Canadian National Railway (or its predecessor Wisconsin Central LTD), and Union Pacific Railroad Company (or its corporate predecessor the Chicago & North Western Railway). In 1992, WSOR's owner and President William Gardner acquired control of another Wisconsin-based class III short line railroad, the Wisconsin & Calumet Railroad (WICT) serving southern Wisconsin and adjacent northern Illinois. In 1996, WSOR merged WICT's operations and properties into WSOR, leaving WSOR as the surviving company.<sup>7</sup> WSOR also acquired several sets of trackage rights from other railroads for the purpose of connecting all of these lines. Early in 2003, WSOR's revenues increased to the point where it became a small class II railroad. In 2005 WSOR expanded again when WisDOT purchased the middle portion (Kiel-to-Saukville) of CN's former Wisconsin Central line from Hilbert south to North Milwaukee and selected WSOR as the operator on that line and WSOR acquired overhead rights from CN between Saukville and

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<sup>7</sup> See, Wisconsin & Southern Railroad Co -Corporate Family Transaction Exemption-Wisconsin and Calumet Railroad Company, STB FD No 33450 (served September 5, 1997)

North Milwaukee to connect the Kiel-to-Saukville Line to the rest of its system.

The proposed transaction includes the acquisition and operation of the Line between MP 14.95 in Plymouth, WI and MP 4.0 in Kohler, WI, which has been out of service for many years.

Here, the State of Wisconsin through WisDOT (instead of WSOR) will purchase the right-of-way and railroad assets constituting the railroad from UP and will contract with the East Wisconsin Counties Railroad Consortium ("the Consortium") to provide service over the Line. The Consortium has in turn selected WSOR to provide that service as its contract operator. Concurrently with this filing, WisDOT is petitioning the Board for a declaratory ruling permitting it to acquire the right-of-way and railroad assets which make up the Line as a non-carrier outside the Board's jurisdiction and without acquiring any common carrier obligation.<sup>8</sup>

By this Petition for Exemption, WSOR seeks Board authority to acquire the Freight Easement over the Line directly from UPRR as well as UPRR's common carrier obligation. WSOR will rehabilitate and restore to service the approximately 10.95

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<sup>8</sup> WSOR understands that WisDOT will be submitting for Board review a copy of the pertinent transaction documents including the UPRR/WisDOT Purchase Agreement, the UPRR Freight Easement to WSOR, and the Operating and Lease Agreement between the Consortium and WSOR. Collectively, these agreements establish that WSOR is the entity with the common carrier responsibility for providing service over the Line and that WisDOT has no ability to control WSOR's service or operations over the Line.



miles of out of service track and will market the Line to former customers and new customers. The Line will connect at Plymouth with WSOR's north-south Kiel-to-Saukville Line.

Additionally, WSOR has concurrently filed a Verified Notice of Exemption with the Board covering UPRR's grant of Overhead Trackage Rights over UPRR's trackage between MP 4.0 at Kohler and MP 1.2 at Kohler Junction.<sup>9</sup> These Overhead Trackage Rights will allow WSOR to operate its trains over UP's trackage for the purpose of interchange with UP at Kohler Junction and to access the Cargill Malt Plant in Sheboygan, WI via the to-be-acquired UPRR Spur running east from Kohler Junction. See, Exhibit A, depicting the Access Trackage and Interchange Trackage.

WSOR is unique among short lines and regional railroads in that it acquires vacant industrial sites for the purpose of enticing rail-served customers to locate there and use its services. WSOR anticipates that the Line and adjacent real estate will provide an excellent location with which to attract new or relocating industry resulting in new job opportunities and economic development for this area. Based upon its success in developing industrial sites at other locations around its system, WSOR believes, as a smaller, locally-based carrier offering more frequent and customer-focused service, it will be able to attract customers to the Line.

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<sup>9</sup> See, STB Finance Docket No. 35191, *supra*.

### III.

#### ADDITIONAL INFORMATION

So that the Board may expeditiously process its request, WSOR provides the following additional information about the transaction:

(1) The full name and address of the Petitioner is Wisconsin & Southern Railroad Co., P.O. Box 90229, Milwaukee, WI 53209-0229.

(2) The name, address, and telephone number of the representative of the Petitioner who should receive correspondence is John D. Heffner, John D. Heffner, PLLC, 1750 K Street, N.W., Suite 200, Washington, D.C. 20006. Petitioner counsel's phone number is (202) 296-3334.

(3) The full name and address of the railroad selling the easement and the spur is the Union Pacific Railroad Company, 1400 Douglas Street, Omaha, Nebraska. Representative for UP is Mack H. Sumate, Jr., (312) 777-2055.

(4) The parties propose to consummate this transaction as soon as possible, hopefully on or about April 15, 2009.<sup>10</sup>

(5) The Freight Easement to be acquired over the line extends eastward from a connection with WSOR's north-south Kie-to-Saukville Line at MP 14.95 at Plymouth, WI, to MP 4.0 near Kohler, WI. Additionally, WSOR will in its own right acquire from UPRR and operate the UPRR Spur, constituting the lead to

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<sup>10</sup> The labor notice required under 19 CFR 112.4(h) will be posted by UP and served by WSOR on the affected unions at least 60 days before the consummation date of this transaction. WSOR will certify this information to the Board once posted and served.

the Cargill Malt Plant at Kohler, WI. Connection and Access by WSOR between the Line and the UPRR Spur is covered by the Overhead Trackage Rights.

(6) Maps indicating the location of the Line, the Overhead Trackage Rights, the UPRR Spur, the Access Trackage and the Interchange Trackage and the WSOR system are attached hereto as Exhibits A and B, respectively.

(7) After the transaction is consummated, WSOR will continue to be a class II carrier

(8) The Board's procedures set forth in its Decision regarding Disclosure of Rail Interchange Commitments<sup>11</sup> do not apply as there is no provision in the UPRR sale agreements to either WisDOT or WSOR restricting WSOR's future interchange with a third party carrier west of MP 14.95 at Plymouth, WI. There are two interchange points with UPRR: UPRR with WSOR at Sheboygan and WSOR with UPRR at Kohler Junction.

#### IV.

##### ARGUMENT

##### THE ACQUISITION AND OPERATION OF THE SUBJECT EASEMENT AND TRACKAGE SHOULD BE EXEMPTED

Petitioner seeks an exemption under 49 U.S.C. 10502 from 49 U.S.C. 10902 to permit it to purchase and operate the Freight Easement on approximately 10.95 miles of trackage (the Line) that WisDOT is acquiring as a noncarrier. Additionally, WSOR

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<sup>11</sup> STB Docket No. EP-575-1 (served May 29, 1993)

seeks to purchase and operate the UPRR Spur which consists of the track constituting the lead to the former Cargill Malt Plant at Kohler, WI, and to operate over the Overhead Trackage Rights between MP 4.0 at Kohler and MP 1.2 at Kohler Junction. But for the exemption of 49 U.S.C. 10502, WSOR's transaction would require the Board's authorization under 49 U.S.C. 10902 applicable to the purchase and operation of actively used railroad lines by existing class II and III rail carriers. Under §10902(c), the Board shall issue a certificate authorizing a class II carrier to acquire an additional line of railroad unless the Board finds that the transaction is inconsistent with the public convenience and necessity.

Petitioner believes that its request is appropriate for exemption from the formal requirements of §10902. Section 10502 directs the Board to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the transportation policy of §10101(a) and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power. Indeed, the legislative history behind §10505 (the predecessor section to the current §10502) makes clear Congress' intent that the Interstate Commerce Commission (and now the Board) use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation.

In discussing the exemption powers of the Board's

predecessor -- the ICC -- the Staggers Act legislative history states:

The policy underlying this provision is that while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); see also, Exemption from Regulation--Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed transaction from §10902 is exactly the type of minor transaction Congress contemplated when it enacted §10502. Requiring WSOR to submit a formal application is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. A grant of the exemption will further several goals of the I.C.C. Termination Act including §10101a (2) and (7), minimizing federal control over transportation and reducing regulatory barriers to entry. A grant will also facilitate the goals of §10101a (5) and (9) providing for sound economic conditions in the transportation

industry and honest and efficient management of railroads. WSOR's purchase and operation will permit a locally-based carrier with strong ties to Wisconsin to rehabilitate and restore to operation the Line and collect local traffic which can then be funneled efficiently to UPRR and other class I carriers for longer haul distribution over the national railroad system.

Granting WSOR's request also satisfies both the limited scope and the no abuse of captive shippers tests of the § 10502 exemption provision. The total length of the Kohler Industrial Lead (the Line) is only about 10.95 miles. The UPRR Spur accessing the Cargill Malt plant is only about 1,000 feet in length and clearly the UPRR Spur is "limited" in scope.

WSOR's current system connects with each of the six largest Class I railroads, and WSOR operates via trackage rights into Chicago, where it connects with the lines of six of the seven of the nation's largest railroads. Because WSOR operates as a neutral "feeder" railroad with multiple Class I connections, WSOR's rail service would increase the competitive options available to shippers that locate on the Line and the UPRR Spur. In this case, customers would have access to either UPRR at Sheboygan or Canadian National Railway ("CN") at either Kiel or Saukville or other carriers through WSOR's connections in Milwaukee or Chicago. For these reasons, WSOR's operation of the Line and purchase and operation of the UPRR Spur will not result in an abuse of market power.

In 1996, the Board promulgated a class exemption entitling

class III carriers to acquire and/or operate actively used rail lines without having to undergo the expense and burden of submitting either a formal application or an individual petition for exemption for operating authority. Class Exemp. For Acq. Or Oper. Under 49 U.S.C. 10902, 1 S.T.B. 95 (1996). Had WSOR still been a class III carrier at the time of this filing, it would have been entitled to avail itself of that class exemption. Due to the unfortunate absence of such a class exemption for the purchase and operation of actively used lines by class II carriers, WSOR must file an individual petition for exemption. But the reasons for granting the exemption sought here are the same as those applicable to a grant of the class exemptions discussed above. Moreover, the Board has on previous occasions exempted similar purchase or lease and operation transactions by class II carriers involving a miniscule amount of trackage. In fact, in Wisconsin & Southern Railroad Co. - Acquisition Exemption - Iowa, Chicago & Eastern Railroad Corporation, STB Finance Docket No. 34464, served June 30, 2004, the Board exempted WSOR's acquisition of about 7 miles of yard trackage in Janesville, WI, that it had long operated under a lease.

V.

EMPLOYEE PROTECTION; CERTIFICATION OF NOTICES

This transaction will be subject to the employee severance conditions described in 49 U.S.C. 10902(d) as set forth in Wisconsin Central Ltd-Acquisition Exemption-Union Pacific

Railroad, 2 S.T.B. 218 (1997), rev'd in part sub nom.  
Association of American Railroads v. STB, 162 F.3d 101 (D.C.  
Cir. 1988).

Under 49 CFR 1121.4(h) WSOR is required to post and serve a notice of intent at least 60 days before the exemption becomes effective. WSOR will serve a letter on the Board certifying that it had complied with the notice and posting requirements of 49 CFR 1121.4(h) once it has done so.

## VI.

### ENVIRONMENTAL AND HISTORIC IMPACTS UNDER 49 CFR 1105

Pursuant to 49 CFR 1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c) (2) (1), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.



VII.

EXPEDITED CONSIDERATION REQUESTED

As noted in the introduction to this Petition, WSOR seeks an expedited decision granting its request effective upon service. In support of that request, WSOR notes that 1) the trackage to be transferred needs substantial rehabilitation which must be performed during the warm weather months of

late Spring and summer, undue delay could jeopardize the completion of that work, 2) the transaction is minor in scope and uncontroversial in impact, and 3) the transaction will not result in any significant changes in operations or competitive impact

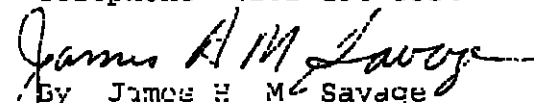
#### VIII

#### CONCLUSION

Accordingly, WSOR requests that the Board grant it an exemption from the provisions of 49 U.S.C. 10902 to permit it to acquire the specified interests and operate on the subject line, the Overhead Trackage Rights, the UPRR Spur, the Access Trackage and Interchange Trackage consistent with the agreements covering same between UPRR and WSOR with a decision issued on or about April 15, 2009, effective upon service

Respectfully submitted,

Joan D. Feldner, PLLC  
1750 K Street, N.W. - Suite 200  
Washington, D.C. 20006  
Telephone (202) 296-3334

  
By James H. M. Savage  
Of counsel

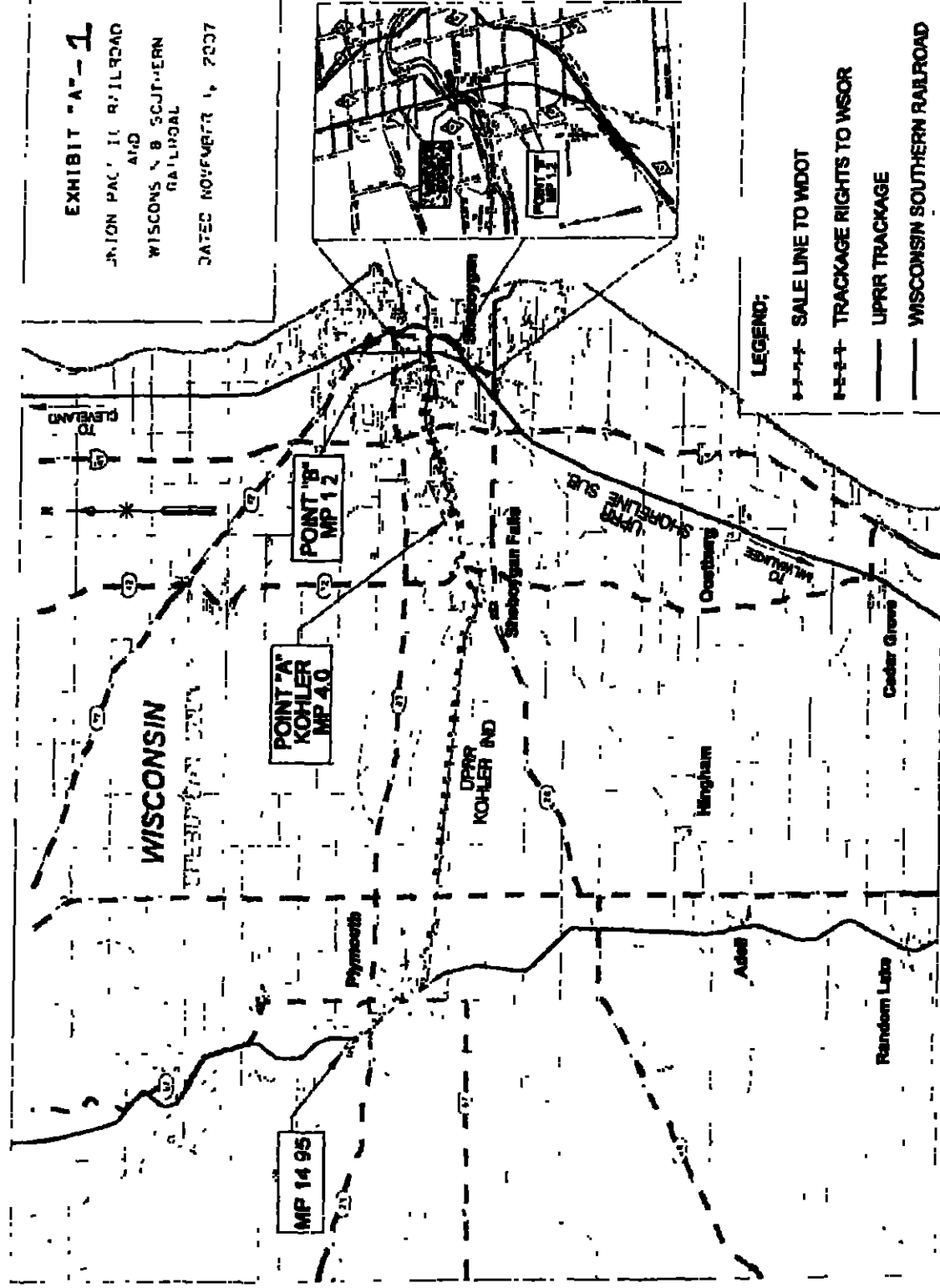
Counsel for Petitioner  
Wisconsin & Southern  
Railroad Co

Dated: February 23, 2009

**EXHIBIT A**

EXHIBIT "A"-1

UNION PAC' 10 RAILROAD  
AND  
WISCONSIN SOUTHERN  
RAILROAD  
DATED NOVEMBER 1, 2007



LEGEND:

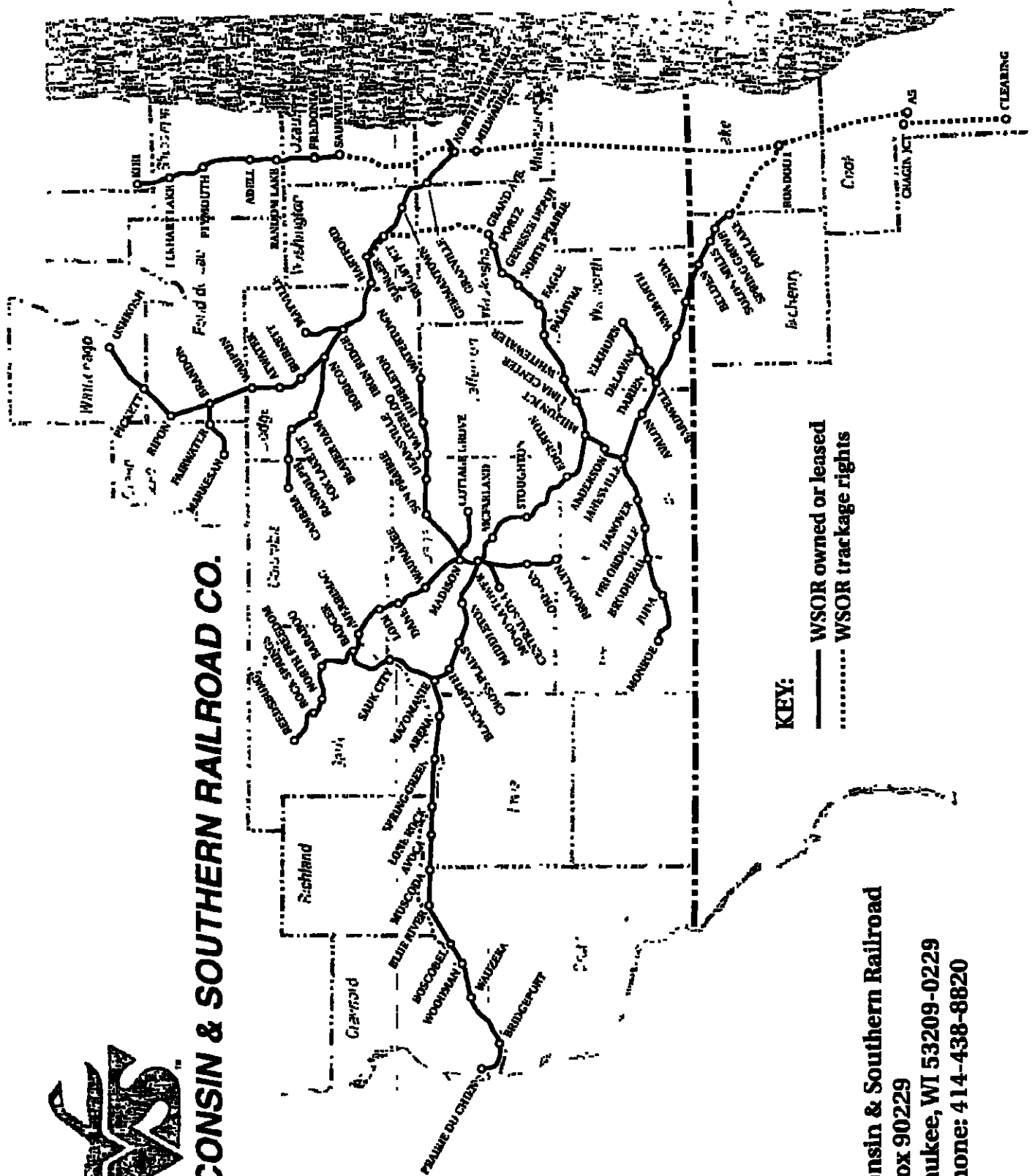
- SALE LINE TO WDOT
- TRACKAGE RIGHTS TO WSOR
- UPRR TRACKAGE
- WISCONSIN SOUTHERN RAILROAD



**EXHIBIT B**



# **WISCONSIN & SOUTHERN RAILROAD CO.**



**Wisconsin & Southern Railroad**  
 P.O. Box 90229  
 Milwaukee, WI 53209-0229  
 telephone: 414-438-8820

**EXHIBIT C**



## **FREIGHT OPERATING AGREEMENT**

This Agreement ("Agreement") is made and entered into as of February 2009 (Effective Date) between UNION PACIFIC RAILROAD COMPANY a Delaware corporation (Grantor), and WISCONSIN & SOUTHERN RAILROAD CO., a Wisconsin corporation ("Grantee")

### **RECITALS**

A This Agreement is entered into between Grantor and Grantee pursuant to the Freight Easement Deed and Agreement executed by Grantor and Grantee with an effective date of \_\_\_\_\_, 2009, under which Grantor quitclaimed to Grantee a freight easement ("Freight Easement") upon, over and across the lines of railroad between Grantor's Milepost 4.0 near Kohler, and Milepost 14.95 at Plymouth, all in Sheboygan County, Wisconsin (the "Property"),

B This Agreement sets forth additional terms and conditions governing Grantee's freight operation of the lines of railroad on Property pursuant to the Freight Easement

C Grantee's use, rights and obligations regarding Grantor's right-of-way covered by the Overhead Trackage Rights Agreement (the "Overhead Trackage Rights Agreement"), dated as of the date of this Agreement, shall be governed by such Overhead Trackage Rights Agreement

## **AGREEMENT**

### **SECTION 1. RAIL SERVICE.**

1.1 Beginning on the Effective Date, Grantee is entitled to use the Property for the full and exclusive operation of rail freight service. Grantor shall

not grant any rights to any other party to use the Property for the operation of rail freight service. Grantor warrants that as of the Effective Date, there is no other freight rail carrier to which Grantor has granted rights to use the Property.

## **SECTION 2. INTENTIONALLY OMITTED**

## **SECTION 3. ABANDONMENT, SUSPENSION OR DISCONTINUANCE**

**3.1** Grantee will not abandon, suspend or discontinue its operation by rail over all or any part of the Property without first applying for and obtaining from the Surface Transportation Board ("STB"), and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such abandonment, suspension or discontinuance of operations over the Property. PROVIDED, HOWEVER, that Grantee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Property, without first giving Grantor sixty (60) days' notice of Grantee's intent to do so.

## **SECTION 4. REPRESENTATIONS AND WARRANTIES.**

**4.1** Grantor represents and warrants that

- (a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and is qualified to do business in the state of Wisconsin
- (b) It has full power and authority to enter into this Agreement and to carry out the obligations of Grantor hereunder

(c) Its execution of and performance under this Agreement do not violate any statute, rule, regulation order writ, injunction or decree of any court, administrative agency or governmental body

**4.2 Grantee represents and warrants that**

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Wisconsin and is qualified to do business in the State of Wisconsin

(b) It has full power and authority to enter into this Agreement, and subject to necessary judicial and regulatory authority to carry out its obligations hereunder

**SECTION 5. OBLIGATIONS OF THE PARTIES.**

**5.2 Laws.** Grantee at its sole cost and expense shall comply with all applicable federal, state and municipal laws, ordinances, and regulations

**5.3 As Is** GRANTEE AND ITS REPRESENTATIVES, PRIOR TO THE EFFECTIVE DATE, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE PROPERTY AND MATTERS RELATED THERETO AS GRANTEE AND ITS REPRESENTATIVES DESIRE GRANTEE SHALL TAKE THE FREIGHT EASEMENT IN AN 'AS IS, WHERE IS' CONDITION WITH ALL FAULTS AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY FITNESS FOR PARTICULAR PURPOSE OR VOLUME OR QUALITY OF TRAFFIC ON THE PROPERTY AND SUBJECT TO (A) ALL OUTSTANDING RIGHTS, AND (B) WITHOUT LIMITATION OF (A) ABOVE,

THE RIGHTS, INTERESTS, CONTRACTS, AGREEMENTS AND LICENSES IDENTIFIED ON **EXHIBIT A** ATTACHED HERETO AND HEREBY MADE A PART HEREOF (WHICH ARE HEREINAFTER REFERRED TO AS "GRANTOR AGREEMENTS")

**5.4 Release** FROM AND AFTER THE CLOSING DATE, GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF AN ACCIDENT OR EVENT FIRST OCCURRING AFTER THE EFFECTIVE DATE OF THIS AGREEMENT AND CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE

CONSERVATION AND RECOVERY ACT) INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF GRANTOR, GRANTEE OR ANY THIRD PARTY AND DAMAGE TO PROPERTY OF GRANTOR, GRANTEE OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

5.5 Environmental Indemnity. FROM AND AFTER THE CLOSING DATE, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "ENVIRONMENTAL COSTS"), IN ANY WAY ARISING OUT OF AN ACCIDENT OR EVENT FIRST OCCURRING AFTER THE EFFECTIVE DATE OF THIS AGREEMENT AND CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL) OR ANY FEDERAL, STATE OR LOCAL LAW,

ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT), AND INCLUDING, WITHOUT LIMITATION PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF GRANTOR, GRANTEE OR ANY THIRD PARTY THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS OFFICERS, SUCCESSORS OR ASSIGNS

5.6 General Indemnity TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, REGARDLESS OF THE NEGLIGENCE, NEGLIGENCE PER SE OR STRICT LIABILITY OF GRANTOR OR GRANTOR'S AGENTS, EMPLOYEES, SERVANTS AFFILIATED COMPANIES, SUCCESSORS OR ASSIGNS (COLLECTIVELY THE GRANTOR'S AGENTS"), GRANTEE SHALL PROTECT, DEFEND, HOLD HARMLESS, AND INDEMNIFY AND REIMBURSE GRANTOR FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, PENALTIES, FINES, EXPENSES DAMAGES, LOSSES AND COSTS, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "COSTS"), INCURRED BY OR ASSESSED AGAINST GRANTOR AND/OR THE GRANTOR'S AGENTS, DUE TO OR RESULTING FROM PERSONAL INJURIES, DEATH, OR PROPERTY LOSS OR DAMAGE ARISING OUT OF GRANTEE'S USE, OPERATION OR MAINTENANCE OF THE PROPERTY

AFTER THE EFFECTIVE DATE OR AS A RESULT OF GRANTEE'S BREACH OF, OR FROM ITS FAILURE TO COMPLY WITH, ANY PROVISIONS OF THIS AGREEMENT, EVEN IF THE COST (A) RESULTS IN WHOLE OR IN PART FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE GRANTOR OR THE GRANTOR'S AGENTS, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, AND THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA") OR (B) IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY OF THE GRANTOR; PROVIDED, HOWEVER, THAT ALL COSTS INCLUDING COSTS FOR PERSONAL INJURIES, DEATH OR PROPERTY LOSS ARISING IN CONNECTION WITH TOXIC WASTE OR ENVIRONMENTAL CONDITIONS, WILL BE GOVERNED BY THE PROVISIONS OF SECTIONS 5 3, 5 4, 5 5

**5.7 Switch Charge.** Grantor is not responsible for and will not absorb any switch charge of any carrier not a party to this Agreement

**SECTION 7. BREACHES; REMEDIES.**

**7.1** Upon the occurrence of any breach of any term hereof, the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 30 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material

breach, the injured party has the right (but not the obligation) at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Agreement or at law or equity including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

7.2 The failure of any party hereto to enforce at any time any of the provisions of this Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Agreement or any part hereof or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

#### **SECTION 8. ARBITRATION.**

8.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by



one party of its desire for arbitration to the other party. If the parties cannot so agree, the party demanding such arbitration (the demanding party) shall notify the other party (the noticed party) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator, notify the demanding party in writing of such appointment, and at its option submit a counter-statement of question(s). Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party so failing. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Delaware upon application by any party after ten (10) days' written notice to the other party.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the parties' statements, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony and arguments, said single arbitrator or

the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

**8.2** Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The non-privileged books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the other parties and the arbitrator(s).

#### **SECTION 9. MISCELLANEOUS.**

**9.1 Entire Agreement.** This Agreement and the Easement Deed and Agreement express the entire agreement between the parties and supersede all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

**9.2    Notices** All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent

(a)    If intended for Grantor, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Grantor at:

Union Pacific Railroad Company  
1400 Douglas Street  
Mailstop 1350  
Omaha, Nebraska 68179  
Attention: Sr Director Rail Line Planning

(b)    If intended for Grantee, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Grantee at:

Wisconsin & Southern Railroad Co  
5300 North 33<sup>rd</sup> Street  
P O Box 9229  
Milwaukee, Wisconsin 53209  
Attn: President

**9.3    Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure**

**9.4    Successors and Assigns** This Agreement shall run with the land, shall be binding upon and inure to the benefit of Grantor and Grantee, and shall be binding upon the successors and assigns of Grantee, subject to the limitations

hereinafter set forth Grantee may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations under this Agreement, without the prior written consent of Grantor, which may be withheld at Grantor's sole and absolute discretion

**9.5 Knowledge** For purposes of this Agreement the term "knowledge" means that which is known by an officer of the Grantor at the level of Vice President or above.

**9.6 Severability** If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

**9.7 Article Headings** Article headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose

**9.8 Governing Law** This Agreement will be governed and construed in accordance with the laws of the State of Nebraska

**9.9 Amendments** No modification, addition or amendments to this Agreement will be effective unless and until such modification, addition or amendment is in writing and signed by the parties

**9.10 Execution Counterparts** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on their behalf, as of the date first herein written

**UNION PACIFIC RAILROAD COMPANY**

By \_\_\_\_\_

Title. \_\_\_\_\_

**WISCONSIN & SOUTHERN RAILROAD  
CO**

By \_\_\_\_\_

Title. \_\_\_\_\_

**EXHIBIT A**

**(See Sheets Next Attached)**



# Kohler Industrial Load Assignments List

AUD_NBR	PURP_DESC	PART_NAME	CITY	SABV	IMP_STRT	ANNO_AMT
NWD3034	Auger Permit/Unloading Device	GILSON BROTHERS CO	PLYMOUTH	WI	0	0
NWD3652	Auger Permit/Unloading Device	BEMS MFR COMPANY	SHEBOYGAN FALLS	WI	0	3
NWD6706	Auger Permit/Unloading Device	BEMS MANUFACTURING COMPANY	SHEBOYGAN FALLS	WI	9	0
NWG239A	Auger Permit/Unloading Device	SULFA FORM COMPANY	PLYMOUTH	WI	0	9
NWG3983	Auger Permit/Unloading Device	SHEBOYGAN FALLS COOP ASSN	SHEBOYGAN FALLS	WI	0	9
NWX3804	Auger Permit/Unloading Device	SHEBOYGAN FALLS CO-OPERATIVE ASSN	SHEBOYGAN FALLS	WI	0	0
NWX5659	Auger Permit/Unloading Device	RAYMOND WACHTER	SHEBOYGAN FALLS	WI	0	0
NWX7862	Auger Permit/Unloading Device	STANDARD OIL CO	PLYMOUTH	WI	0	0
NWY19406	Bridge Agreement	STATE OF WISCONSIN	PLYMOUTH	WI	0	0
NWD5657	Crossing - Pedestrian Agreement	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
185602	Crossing - Private Roadway	BEMS MANUFACTURING COMPANY IN	PLYMOUTH	WI	7.1	1565.73
NWD5615	Crossing - Private Roadway	BEMS MANUFACTURING CO	SHEBOYGAN FALLS	WI	0	0
NWD6306	Crossing - Private Roadway	BEMS MANUFACTURING COMPANY	SHEBOYGAN FALLS	WI	0	0
NWD6639	Crossing - Private Roadway	BEMS MANUFACTURING	SHEBOYGAN FALLS	WI	0	0
NWD6938	Crossing - Private Roadway	JOSEPH E. RICHARDSON, SR.	SHEBOYGAN FALLS	WI	0	0
185177	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	988	0
185178	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	988	0
185278	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	988	0
185279	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	988	0
185286	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	999	0
215739	Crossing - Wireline	CHARTER COMMUNICATIONS	SHEBOYGAN FALLS	WI	7.25	0
NWF1266	Crossing - Wireline	BEMS MANUFACTURING COMPANY	SHEBOYGAN FALLS	WI	0	0
NWF1798	Crossing - Wireline	WISCONSIN POWER & LIGHT	SHEBOYGAN FALLS	WI	0	0
NWF3711	Crossing - Wireline	PLYMOUTH, WI	PLYMOUTH	WI	0	0
NWF8149	Crossing - Wireline	SHEBOYGAN FALLS ELECTRIC UTIL	PLYMOUTH	WI	0	0
NWX0773	Crossing - Wireline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN FALLS	WI	0	0
NWX0803	Crossing - Wireline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN FALLS	WI	0	0
NWX2989	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NWX3962	Crossing - Wireline	SHEBOYGAN FALLS, CITY OF	PLYMOUTH	WI	0	0
NWX3982	Crossing - Wireline	WISCONSIN TELEPHONE CO	SHEBOYGAN FALLS	WI	0	0
NWX3883	Crossing - Wireline	WISCONSIN TELEPHONE CO	SHEBOYGAN FALLS	WI	0	0
NWX8157	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NWX8798	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NWX9228	Crossing - Wireline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0	0
NWX9880	Crossing - Wireline	FALLS MOTOR CORP	PLYMOUTH	WI	0	0
NWY1507	Crossing - Wireline	WISCONSIN ELECTRIC POWER CO	SHEBOYGAN FALLS	WI	0	0
188672	Crossing Pipeline	PLYMOUTH, CITY OF	SHEBOYGAN FALLS	WI	0	0
189698	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORPO	PLYMOUTH	WI	12	0
190080	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN	WI	7.61	0
190091	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN	WI	7.5	0
207718	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN	WI	7.5	0
207844	Crossing Pipeline	CITY OF PLYMOUTH	PLYMOUTH	WI	13.49	0
222774	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORPORATION	PLYMOUTH	WI	13.2	0
236212	Crossing Pipeline	PLYMOUTH UTILITIES	PLYMOUTH	WI	12.44	0
241851	Crossing Pipeline	CITY OF SHEBOYGAN FALLS	PLYMOUTH	WI	5.41	0
		CITY OF PLYMOUTH	PLYMOUTH	WI	12.53	0



# Kohler Industrial Land Assignment List

NW13345	Crossing Pipeline	STATE OF WISCONSIN	SHEBOYGAN FALLS	WI	0
NWE1017	Crossing Pipeline	GREAT LAKES HOMES, INC	SHEBOYGAN FALLS	WI	0
NWE172	Crossing Pipeline	WISCONSIN PUBLIC SERVICE	PLYMOUTH	WI	0
NWE1731	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE2187	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE3115	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE363	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	PLYMOUTH	WI	0
NWE5214	Crossing Pipeline	PLYMOUTH, CITY OF	SHEBOYGAN FALLS	WI	0
NWE5424	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE3503	Crossing Pipeline	BEMIS MANUFACTURING CO	PLYMOUTH	WI	0
NWE8058	Crossing Pipeline	BEMIS MFG. CO.	SHEBOYGAN FALLS	WI	0
NWE8143	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE8232	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE8601	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	PLYMOUTH	WI	0
NWE7320	Crossing Pipeline	SHEBOYGAN FALLS, CITY OF	SHEBOYGAN FALLS	WI	0
NWE7330	Crossing Pipeline	BEMIS MANUFACTURING COMPANY	SHEBOYGAN FALLS	WI	0
NWE7637	Crossing Pipeline	KOHLER, VILLAGE OF	KOHLER	WI	0
NWE7969	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWE8210	Crossing Pipeline	PLYMOUTH UTILITIES	PLYMOUTH	WI	0
NWE8244	Crossing Pipeline	RICHARDSON, JAMES L	PLYMOUTH	WI	0
NWX1032	Crossing Pipeline	SHEBOYGAN FALLS UTILITIES	SHEBOYGAN FALLS	WI	0
NWX1072	Crossing Pipeline	BORDEN CO	SHEBOYGAN FALLS	WI	0
NWX1083	Crossing Pipeline	ANR PIPELINE COMPANY	PLYMOUTH	WI	0
NWX1324	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWX1984	Crossing Pipeline	KOHLER, VILLAGE OF	PLYMOUTH	WI	0
NWX3419	Crossing Pipeline	S R CHEESE CO	KOHLER	WI	0
NWX4390	Crossing Pipeline	HERMAN HAILER	PLYMOUTH	WI	0
NWX5018	Crossing Pipeline	KRAFT CHEESE CO	SHEBOYGAN FALLS	WI	0
NWX5950	Crossing Pipeline	KRAFT CHEESE CO.	PLYMOUTH	WI	0
NWX5973	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORP	PLYMOUTH	WI	0
NWX6265	Crossing Pipeline	THE BORDEN CO	KOHLER	WI	0
NWX7248	Crossing Pipeline	PLYMOUTH, CITY OF	PLYMOUTH	WI	0
NWX7471	Crossing Pipeline	O W TIMM	PLYMOUTH	WI	0
NWX7477	Crossing Pipeline	WISCONSIN PUBLIC SERVICE CORP	PLYMOUTH	WI	0
NWX8329	Crossing Pipeline	KRAFT BROTHERS CHEESE CO	SHEBOYGAN FALLS	WI	0
NWX8352	Crossing Pipeline	A. RUEBELINK & W. GALERIELSE, JR	PLYMOUTH	WI	0
NWX8388	Crossing Pipeline	LAKE LE MAHIE	SHEBOYGAN FALLS	WI	0
NWX8414	Crossing Pipeline	HENRY P. EDLER	SHEBOYGAN FALLS	WI	0
NWX8415	Crossing Pipeline	HARRISON JOSLIN	SHEBOYGAN FALLS	WI	0
NWX9025	Crossing Pipeline	OTTO FENNER & LAKE LEMAHIE	SHEBOYGAN FALLS	WI	0
NWD935	Easement - Pipe, Wire, Roadway, Drainage	KOHLER, VILLAGE OF	PLYMOUTH	WI	0
NWX5525	Easement - Pipe, Wire, Roadway, Drainage	KOHLER, VILLAGE OF	KOHLER	WI	0
185176	Encroachment - Wireline	CHARTER COMMUNICATIONS	KOHLER	WI	0
217371	Encroachment - Wireline	BEMIS MANUFACTURING	SHEBOYGAN FALLS	WI	998
229047	Encroachment - Wireline	BEMIS MANUFACTURING	SHEBOYGAN FALLS	WI	7.5
NWY0536	Exchange of Property	MILW & NORTHERN RAILWAY CO	PLYMOUTH	WI	5.96

**WHEN RECORDED RETURN TO  
AND MAIL TAX NOTICES TO:**

Wisconsin & Southern Railroad  
Co

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPACE ABOVE FOR RECORDER'S USE ONLY

**FREIGHT EASEMENT DEED AND AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

That, effective as of \_\_\_\_\_, 2009 ("Effective Date"), **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it duly paid by **WISCONSIN & SOUTHERN RAILROAD CO.**, a Wisconsin corporation, Grantee, the receipt whereof is hereby acknowledged, quitclaims to Grantee, its successors and assigns, a permanent, exclusive easement upon, over, under and across the lines of railroad between Grantor's Milepost 4 0 near Kohler, and Milepost 14 95 at Plymouth, all in Sheboygan County, Wisconsin, more particularly described in Exhibit A attached hereto and hereby made a part hereof (the "Property"), for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, replace, relocate and/or remove existing and/or future railroad, rail, and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "Freight Easement.")

*This Freight Easement is made subject to the Freight Operating Agreement dated as of February, 2009, between Grantor and Grantee (the "Operating Agreement").* By its execution of this Freight Easement Deed and Agreement, Grantee, effective as of the Effective Date, for itself, successors and assigns, assumes and agrees to perform the obligations as a common carrier freight railroad under applicable federal laws and regulations and all obligations to the shipping public with respect to the Property, and to perform the obligations of Grantee under the Operating Agreement. *Grantee agrees to indemnify, defend and hold harmless Grantor from and against any losses, actions, causes of action, damages, costs or expenses arising out of or in any manner relating to Grantee's breach of any of Grantee's obligations under the foregoing sentence. With respect to the period of time prior to the Effective Date, Grantor agrees to indemnify, defend and hold harmless Grantee from and against any losses, actions, causes of action, damages, costs or expenses arising out of or in any manner relating to*

**Grantor's failure to perform the obligations as a common carrier freight railroad under applicable federal laws and regulations and all obligations to the shipping public with respect to the Property.**

**THIS FREIGHT EASEMENT ALSO MADE SUBJECT TO:**

- (1) Standard exceptions of a Title Company in its title policies issued in the State of Wisconsin,**
- (2) Special taxes or assessments for improvements not yet completed, if any;**
- (3) Installments not due at the date hereof of any special tax or assessment for improvements completed, if any,**
- (4) General taxes, if any, for the tax year prior to the year in which the Deed is delivered and subsequent years;**
- (5) Building, building lines and use or occupancy restrictions, zoning and building laws or ordinances, and other laws, ordinances, requirements, limitations, restrictions, regulations and codes which are or may be imposed upon the property by any governmental authority having jurisdiction thereof;**
- (6) Roads and highways, if any,**
- (7) Judgment liens, however, any judgment against Grantor which may appear of record as a lien against the property shall be settled and satisfied by Grantor if and when it is judicially determined to be finally valid, and Grantor shall indemnify Grantee for all loss arising out of Grantor's failure to have such judgment lien so settled and satisfied. This provision shall survive the Closing and the delivery of the Deed;**
- (8) Covenants, conditions and restrictions of record, and recorded licenses and easements,**
- (9) The rights of any owner of the mineral estate in said property, if any**
- (10) Rights of any government agencies, public or quasi-public utilities for use, maintenance, repair, replacement and reconstruction of existing driveways, roads and highways, conduits, sewers, drains water mains, fiber optics cables and/or communication systems, gas lines, electric power lines, wires, and other utilities and easements,**
- (11) Acts by, through or under Grantee;**

The right, title and interest in the easement granted to Grantee herein over any portion of the Subject Property shall terminate, cease and determine upon the occurrence of all of the following. (i) Grantee's abandonment of rail freight transportation service over such portion of the Subject Property pursuant to a final order of the United States Surface Transportation Board ("STB Abandonment Order"); (ii) recording in the offices of the Register of Deeds for the county or counties in which such portion of the Subject Property is located of a copy of the STB Abandonment Order, (iii) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of termination of the easement; and (iv) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of consummation of the STB Abandonment Order.

Grantee, by its execution of this Easement Deed and Agreement, agrees for itself, its successors and assigns, to observe each and all of the terms, conditions, limitations, and covenants in this Freight Easement Deed and Agreement

This Freight Easement Deed and Agreement constitutes covenants running with the land and the Freight Easement and shall bind and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**GRANTOR:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

**Attest:**

\_\_\_\_\_  
Assistant Secretary

(Seal)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

**WISCONSIN & SOUTHERN RAILROAD,  
CO., a Wisconsin corporation**

**Attest:**

\_\_\_\_\_  
Secretary

(Seal)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who are the \_\_\_\_\_ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument

WITNESS my hand and official seal. |

\_\_\_\_\_  
Notary Public

(Seal)

STATE OF WISCONSIN            )  
  ) ss.  
COUNTY OF MILWAUKEE        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me,  
Notary Public in and for said County and State, personally appeared  
\_\_\_\_\_ and \_\_\_\_\_ who are the  
\_\_\_\_\_ and the \_\_\_\_\_ Secretary,  
respectively, of Wisconsin and Southern Railroad Co , and who are personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the persons whose  
names are subscribed to in the within instrument, and acknowledged to me that they  
executed the same in their authorized capacities, and that by their signatures on the  
instrument the persons, or the entity upon behalf of which the persons acted, executed  
the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public

(Seal)

**Union Pacific Railroad Company**

**Sheboygan County, Wisconsin**

**Exhibit "A"**

**[See Next Sheet Attached]**

**UNION PACIFIC RAILROAD COMPANY**  
**Sheboygan County, Wisconsin**  
**EXHIBIT "A"**

All right, title and interest in and to that certain line of property, variable in width, of the Union Pacific Railroad Company, known as the Kohler Industrial Lead as formerly constructed and operated in, over, and across the following legal Subdivisions extending in a westerly direction from a point in the SE ¼ of Section 30, Township 15 North, Range 23 East 4<sup>th</sup> Principal Meridian being Railroad Mile Post 4 to a point in the NE ¼ of Section 21, Township 15 North, Range 21 East 4<sup>th</sup> Principal Meridian being Railroad Mile Post 14.95 in Sheboygan County, Wisconsin:

<u>Subdivisions</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>
SE ¼	30	15 N	23 E	4 <sup>th</sup>
SW ¼	30	15 N	23 E	4 <sup>th</sup>
NW ¼	31	15 N	23 E	4 <sup>th</sup>
NE ¼	36	15 N	22 E	4 <sup>th</sup>
NW ¼	36	15 N	22 E	4 <sup>th</sup>
NE ¼	35	15 N	22 E	4 <sup>th</sup>
SE ¼	35	15 N	22 E	4 <sup>th</sup>
SW ¼	35	15 N	22 E	4 <sup>th</sup>
NW ¼	35	15 N	22 E	4 <sup>th</sup>
NE ¼	34	15 N	22 E	4 <sup>th</sup>
NW ¼	34	15 N	22 E	4 <sup>th</sup>
NE ¼	33	15 N	22 E	4 <sup>th</sup>
NW ¼	33	15 N	22 E	4 <sup>th</sup>
NE ¼	32	15 N	22 E	4 <sup>th</sup>
NW ¼	32	15 N	22 E	4 <sup>th</sup>
SW ¼	29	15 N	23 E	4 <sup>th</sup>
SE ¼	29	15 N	22 E	4 <sup>th</sup>
SW ¼	30	15 N	22 E	4 <sup>th</sup>
SE ¼	25	15 N	21 E	4 <sup>th</sup>
SW ¼	25	15 N	21 E	4 <sup>th</sup>
SE ¼	26	15 N	21 E	4 <sup>th</sup>
SW ¼	26	15 N	21 E	4 <sup>th</sup>
SE ¼	27	15 N	21 E	4 <sup>th</sup>



NE ¼	27	15 N	21 E	4 <sup>th</sup>
NW ¼	27	15 N	21 E	4 <sup>th</sup>
SW ¼	22	15 N	21 E	4 <sup>th</sup>
SE ¼	21	15 N	21 E	4 <sup>th</sup>
NE ¼	21	15 N	21 E	4 <sup>th</sup>

Contains 120 135 Acres more or less.

OFFICE OF REAL ESTATE  
 OMAHA, NEBRASKA  
 WRITTEN JCO  
 February 1, 2005  
 228221.log